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FILED

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
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8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,) 2:08-cr-00376-EJG
12 Plaintiff,)
13 v.) APPLICATION ^{and} FOR ORDER
14 GARRET GRIFFITH GILILLAND III,) REGARDING CRIMINAL FORFEITURE
and NICOLE MAGPUSAO,) OF PROPERTY IN GOVERNMENT
15 Defendants.) CUSTODY - 18 U.S.C. §
16) 983(a)(3)(B)(ii)(II)
17)

18 The United States of America, through its counsel, hereby
19 moves for an order allowing the government to maintain custody of
20 property already in the government's possession pending the
21 resolution of a criminal forfeiture matter. The grounds for the
22 motion are as follows:

23 On or about June 25, 2008, law enforcement officers in Butte
24 County and agents with the Federal Bureau of Investigation
25 executed a Federal search warrant at a residence located at 824
26 Whispering Winds Lane, Chico, California. The officers seized
27 the following during the execution of the Federal search warrant:

28 a) Approximately \$28,900 in U.S. Currency.

1 Following the execution of the search warrant, it was
2 learned that Gililland fled to Europe. In October 2008, a source
3 in Spain revealed that he was supposed to receive a package for
4 Gililland. On or about October 10, 2008, FBI agents contacted
5 the FedEx Kinko's Office and Print Services located at 5600 J
6 Street, Sacramento, California regarding a package that was being
7 shipped to Gililland through the source in Spain. Pursuant to
8 FedEx' policy, a FedEx employee was allowed to retrieve the
9 package and open it. Inside the package was \$20,000 in cash that
10 was being smuggled to Gililland. The FBI agent seized the
11 following:

12 b) Approximately \$20,000 in U.S. Currency.
13 Hereinafter, the above-referenced assets are referred to as the
14 "seized assets".

15 On October 29, 2008, the Grand Jury returned a Superseding
16 Indictment containing forfeiture allegations that include the
17 seized assets. The Superseding Indictment alleges that the
18 seized assets are subject to forfeiture pursuant to 18 U.S.C. §
19 982(a)(1), 28 U.S.C. § 2461(c) and 31 U.S.C. § 5332(b)(2).

20 Title 18 U.S.C. § 982(b)(1), Title 28 U.S.C. § 2461(c) and
21 Title 31 U.S.C. § 5332(b)(3) incorporate the forfeiture
22 procedures set forth in 21 U.S.C. § 853. That statute provides
23 several methods for preserving property for the purpose of
24 criminal forfeiture. One such provision authorizes a court upon
25 the filing of an indictment charging an offense for which
26 forfeiture may be ordered and alleging that specific property
27 would, in the event of conviction, be subject to forfeiture to
28 "take any other action to preserve the availability" of such

1 property. See 21 U.S.C. § 853(e)(1)(A). Such restraining
2 orders may be entered ex parte. And, in entering the order, the
3 Court may rely on the grand jury's return of an indictment
4 specifying that the property shall, upon conviction, be subject
5 to forfeiture to the United States. See, e.g., *United States v.*
6 *Jamieson*, 427 F.3d 394, 405-06 (6th Cir. 2005) (initial issuance
7 of restraining order under Section 853(e)(1)(A) may be ex parte
8 and based on grand jury's finding of probable cause).

9 The government contends here that the "take any other action
10 to preserve the availability" of property provision of Section
11 853(e)(1)(A) applies in circumstances where, as here, the
12 government has already obtained lawful custody of the assets
13 pursuant to a Federal search warrant, and the policies in place
14 at FedEx Kinko, and the government seeks to continue to maintain
15 custody of such assets pending further criminal forfeiture
16 proceedings. Accordingly, pursuant to Section 853(e)(1)(A) of
17 Title 21, the United States respectfully moves this court to
18 issue an ex parte order based on the grand jury's finding of
19 probable cause that directs the United States may maintain
20 custody of the seized assets through the conclusion of the
21 pending criminal case.

22 DATED: 12/14/2008

McGREGOR W. SCOTT
United States Attorney

23
24 /s/ Russell L. Carlberg
RUSSELL L. CARLBERG
Assistant U.S. Attorney

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